

1-1 By: Zaffirini, Rodríguez, Watson S.B. No. 1994
 1-2 (In the Senate - Filed March 10, 2017; March 27, 2017, read
 1-3 first time and referred to Committee on Business & Commerce;
 1-4 May 9, 2017, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 7, Nays 0; May 9, 2017, sent
 1-6 to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14			X	
1-15	X			
1-16			X	
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1994 By: Zaffirini

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to residential mortgage loans, including the financing of
 1-22 residential real estate purchases by means of a wrap mortgage loan;
 1-23 providing licensing requirements; authorizing an administrative
 1-24 penalty.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section 156.202, Finance Code, is amended by
 1-27 amending Subsection (a-1) and adding Subsection (b) to read as
 1-28 follows:

1-29 (a-1) The following entities are exempt from this chapter:

1-30 (1) a nonprofit organization:

1-31 (A) providing self-help housing that originates
 1-32 zero interest residential mortgage loans for borrowers who have
 1-33 provided part of the labor to construct the dwelling securing the
 1-34 loan; or

1-35 (B) that has designation as a Section 501(c)(3)
 1-36 organization by the Internal Revenue Service and originates
 1-37 residential mortgage loans for borrowers who, through a self-help
 1-38 program, have provided at least 200 labor hours or 65 percent of the
 1-39 labor to construct the dwelling securing the loan;

1-40 (2) a mortgage banker registered under Chapter 157;

1-41 (3) subject to Subsection (b), any owner of
 1-42 residential real estate who in any 12-consecutive-month period
 1-43 makes no more than five residential mortgage loans to purchasers of
 1-44 the property for all or part of the purchase price of the
 1-45 residential real estate against which the mortgage is secured; and

1-46 (4) an entity that is:

1-47 (A) a depository institution;

1-48 (B) a subsidiary of a depository institution that
 1-49 is:

1-50 (i) owned and controlled by the depository
 1-51 institution; and

1-52 (ii) regulated by a federal banking agency;

1-53 or

1-54 (C) an institution regulated by the Farm Credit
 1-55 Administration.

1-56 (b) In determining eligibility for an exemption under
 1-57 Subsection (a-1)(3), two or more owners of residential real estate
 1-58 are considered a single owner for the purpose of computing the
 1-59 number of mortgage loans made within the period specified by that
 1-60 subdivision if any of the owners are affiliates, as defined by

2-1 Section 1.002(1), Business Organizations Code, or if any of the
2-2 owners have substantially common ownership, as determined by the
2-3 commissioner.

2-4 SECTION 2. Section 157.0121, Finance Code, is amended by
2-5 amending Subsection (c) and adding Subsection (f) to read as
2-6 follows:

2-7 (c) Employees of the following entities, when acting for the
2-8 benefit of those entities, are exempt from the licensing and other
2-9 requirements of this chapter applicable to residential mortgage
2-10 loan originators:

2-11 (1) a nonprofit organization:

2-12 (A) providing self-help housing that originates
2-13 zero interest residential mortgage loans for borrowers who have
2-14 provided part of the labor to construct the dwelling securing the
2-15 loan; or

2-16 (B) that has designation as a Section 501(c)(3)
2-17 organization by the Internal Revenue Service and originates
2-18 residential mortgage loans for borrowers who, through a self-help
2-19 program, have provided at least 200 labor hours or 65 percent of the
2-20 labor to construct the dwelling securing the loan;

2-21 (2) subject to Subsection (f), any owner of
2-22 residential real estate who in any 12-consecutive-month period
2-23 makes no more than five residential mortgage loans to purchasers of
2-24 the property for all or part of the purchase price of the
2-25 residential real estate against which the mortgage is secured; and

2-26 (3) an entity that is:

2-27 (A) a depository institution;

2-28 (B) a subsidiary of a depository institution that
2-29 is:

2-30 (i) owned and controlled by the depository
2-31 institution; and

2-32 (ii) regulated by a federal banking agency;

2-33 or

2-34 (C) an institution regulated by the Farm Credit
2-35 Administration.

2-36 (f) In determining eligibility for an exemption under
2-37 Subsection (c)(2), two or more owners of residential real estate
2-38 are considered a single owner for the purpose of computing the
2-39 number of mortgage loans made within the period specified by that
2-40 subdivision if any of the owners are affiliates, as defined by
2-41 Section 1.002(1), Business Organizations Code, or if any of the
2-42 owners have substantially common ownership, as determined by the
2-43 commissioner.

2-44 SECTION 3. Subtitle E, Title 3, Finance Code, is amended by
2-45 adding Chapter 159 to read as follows:

2-46 CHAPTER 159. WRAP MORTGAGE LOAN FINANCING

2-47 SUBCHAPTER A. GENERAL PROVISIONS

2-48 Sec. 159.001. DEFINITIONS. In this chapter:

2-49 (1) "Commissioner" means the savings and mortgage
2-50 lending commissioner.

2-51 (2) "Finance commission" means the Finance Commission
2-52 of Texas.

2-53 (3) "Residential mortgage loan" has the meaning
2-54 assigned by Section 180.002.

2-55 (4) "Residential real estate" has the meaning assigned
2-56 by Section 180.002.

2-57 (5) "Wrap borrower" means a person obligated to pay a
2-58 wrap mortgage loan.

2-59 (6) "Wrap lender" means:

2-60 (A) a person who makes a wrap mortgage loan; or

2-61 (B) an owner of residential real estate who
2-62 contracts with another person to make a wrap mortgage loan to a wrap
2-63 borrower on the owner's behalf to finance the purchase of the
2-64 owner's residential real estate.

2-65 (7) "Wrap mortgage loan" means a residential mortgage
2-66 loan:

2-67 (A) made to finance the purchase of residential
2-68 real estate that will continue to be subject to an unreleased lien
2-69 that:

3-1 (i) attached to the residential real estate
 3-2 before the loan was made; and
 3-3 (ii) secures a debt incurred by a person
 3-4 other than the wrap borrower that was not paid off at the time the
 3-5 loan was made; and
 3-6 (B) obligating the wrap borrower to the wrap
 3-7 lender for payment of a debt the principal amount of which includes:
 3-8 (i) the outstanding balance of the debt
 3-9 described by Paragraph (A)(ii); and
 3-10 (ii) any remaining amount of the purchase
 3-11 price financed by the wrap lender.

3-12 Sec. 159.002. INAPPLICABILITY OF CHAPTER. (a) In this
 3-13 section, "unimproved residential real estate" means residential
 3-14 real estate on which a dwelling has not been constructed.

3-15 (b) Notwithstanding any other provision of this chapter,
 3-16 this chapter does not apply to a wrap mortgage loan made by or on
 3-17 behalf of an owner of unimproved residential real estate to a
 3-18 purchaser of that residential real estate if:

3-19 (1) the residential real estate purchased will not
 3-20 continue to be subject to any unreleased lien described by Section
 3-21 159.001(7)(A) that secures a debt that is subject to a due-on-sale
 3-22 clause in connection with which the lienholder may foreclose the
 3-23 lien; or

3-24 (2) the residential real estate purchased will
 3-25 continue to be subject to an unreleased lien described by
 3-26 Subdivision (1) and the holder of that unreleased lien has
 3-27 consented to the sale of the residential real estate.

3-28 Sec. 159.003. EXEMPTIONS. (a) The following persons are
 3-29 exempt from this chapter:

3-30 (1) a federally insured bank, savings bank, savings
 3-31 and loan association, Farm Credit System Institution, or credit
 3-32 union;

3-33 (2) a subsidiary of a federally insured bank, savings
 3-34 bank, savings and loan association, Farm Credit System Institution,
 3-35 or credit union;

3-36 (3) an authorized lender licensed under Chapter 342;

3-37 (4) the state or a governmental agency, political
 3-38 subdivision, or other instrumentality of the state, or an employee
 3-39 of the state or a governmental agency, political subdivision, or
 3-40 instrumentality of the state who is acting within the scope of the
 3-41 person's employment; or

3-42 (5) subject to Subsection (b), an owner of residential
 3-43 real estate if the owner does not in any 12-consecutive-month
 3-44 period make, or contract with another person to make, more than five
 3-45 wrap mortgage loans to purchasers of the property for all or part of
 3-46 the purchase price of the residential real estate against which the
 3-47 mortgage is secured.

3-48 (b) In determining eligibility for an exemption under
 3-49 Subsection (a)(5), two or more owners of residential real estate
 3-50 are considered a single owner for the purpose of computing the
 3-51 number of wrap mortgage loans made within the period specified by
 3-52 that subdivision if any of the owners are affiliates, as defined by
 3-53 Section 1.002(1), Business Organizations Code, or if any of the
 3-54 owners have substantially common ownership, as determined by the
 3-55 commissioner.

SUBCHAPTER B. LICENSING

3-57 Sec. 159.051. LICENSE REQUIRED. (a) A person may not
 3-58 originate or make a wrap mortgage loan unless the person is licensed
 3-59 to originate or make residential mortgage loans under Chapter 156
 3-60 or 157 or is exempt from licensing as provided under an applicable
 3-61 provision of those chapters.

3-62 (b) The requirement to hold a license under Subsection (a)
 3-63 applies to a person originating or making a wrap mortgage loan
 3-64 regardless of whether the person engages in a specific activity for
 3-65 which a license is required under Chapter 156 or 157 in connection
 3-66 with the originating or making of the loan.

SUBCHAPTER C. TRANSACTION REQUIREMENTS; REMEDIES

3-68 Sec. 159.101. DISCLOSURE STATEMENT. (a) A wrap lender not
 3-69 otherwise required to provide a written disclosure statement to the

4-1 wrap borrower under Section 5.016, Property Code, must, on or
 4-2 before the seventh day before the wrap mortgage loan agreement is
 4-3 entered into, provide to the wrap borrower a separate written
 4-4 disclosure statement in at least 12-point type that contains the
 4-5 information required for a written disclosure statement under
 4-6 Section 5.016, Property Code.

4-7 (b) Regardless of whether the wrap lender provides a written
 4-8 disclosure statement under Subsection (a) or under Section 5.016,
 4-9 Property Code, the wrap lender's disclosure statement to the wrap
 4-10 borrower must include a statement in a form substantially similar
 4-11 to the following:

4-12 NOTICE REGARDING PROPERTY INSURANCE: ANY INSURANCE MAINTAINED BY A
 4-13 SELLER, LENDER, OR OTHER PERSON WHO IS NOT THE BUYER OF THIS
 4-14 PROPERTY MAY NOT PROVIDE COVERAGE TO THE BUYER IF THE BUYER SUFFERS
 4-15 A LOSS OR INCURS LIABILITY IN CONNECTION WITH THE PROPERTY. TO
 4-16 ENSURE THE BUYER'S INTERESTS ARE PROTECTED, THE BUYER SHOULD
 4-17 PURCHASE THE BUYER'S OWN PROPERTY INSURANCE. BEFORE PURCHASING
 4-18 THIS PROPERTY, YOU MAY WISH TO CONSULT AN INSURANCE AGENT REGARDING
 4-19 THE INSURANCE COVERAGE AVAILABLE TO YOU AS A BUYER OF THE PROPERTY.

4-20 Sec. 159.102. FOREIGN LANGUAGE REQUIREMENT. Regardless of
 4-21 whether the wrap lender provides a written disclosure statement
 4-22 under Section 159.101 or under Section 5.016, Property Code, if the
 4-23 negotiations that precede the execution of the wrap mortgage loan
 4-24 agreement are conducted primarily in a language other than English,
 4-25 the wrap lender shall provide a copy of the required disclosure
 4-26 statement in that language to the wrap borrower.

4-27 Sec. 159.103. FAILURE TO PROVIDE DISCLOSURE: TOLLING OF
 4-28 LIMITATIONS. If a wrap lender fails to provide the disclosure
 4-29 statement as required by Section 159.101 or fails to provide the
 4-30 disclosure statement in the language required by Section 159.102,
 4-31 the limitations period applicable to any cause of action of the wrap
 4-32 borrower against the wrap lender arising out of the wrap lender's
 4-33 violation of a law of this state in connection with the wrap
 4-34 mortgage loan transaction is tolled until the 120th day after the
 4-35 date the required disclosure statement is provided.

4-36 Sec. 159.104. ENFORCEABILITY OF WRAP LIEN. A lien securing
 4-37 a wrap mortgage loan is void unless:

4-38 (1) the residential real estate was conveyed to the
 4-39 purchaser with the written consent of each holder of an unreleased
 4-40 lien described by Section 159.001(7)(A) and a copy of each
 4-41 lienholder's written consent is attached to the recorded instrument
 4-42 conveying the residential real estate; and

4-43 (2) the wrap mortgage loan and the conveyance of the
 4-44 residential real estate securing the loan are closed by an attorney
 4-45 or a title company and an affidavit of a person knowledgeable of the
 4-46 facts regarding the closing location that confirms the closing
 4-47 location is attached to the recorded instrument conveying the
 4-48 residential real estate.

4-49 Sec. 159.105. BORROWER'S RIGHT OF ACTION. (a) A wrap
 4-50 borrower may bring an action to:

4-51 (1) obtain declaratory or injunctive relief to enforce
 4-52 this subchapter;

4-53 (2) recover any actual damages suffered by the wrap
 4-54 borrower as a result of a violation of this subchapter; or

4-55 (3) obtain other remedies available in an action under
 4-56 Section 17.50, Business & Commerce Code, as otherwise authorized
 4-57 under this subchapter.

4-58 (b) A wrap borrower who prevails in an action under this
 4-59 section may recover court costs and reasonable attorney's fees.

4-60 Sec. 159.106. WAIVER OR AVOIDANCE PROHIBITED. (a) Any
 4-61 purported waiver of a right of a wrap borrower under this subchapter
 4-62 or purported exemption of a person from liability for a violation of
 4-63 this subchapter is void.

4-64 (b) A person who is a party to a residential real estate
 4-65 transaction may not evade the application of this subchapter by any
 4-66 device, subterfuge, or pretense, and any attempt to do so is void
 4-67 and a deceptive trade practice under Subchapter E, Chapter 17,
 4-68 Business & Commerce Code, and is actionable under that subchapter.

4-69 Sec. 159.107. RULEMAKING AUTHORITY. The finance commission

5-1 may adopt and enforce rules necessary for the intent of or to ensure
5-2 compliance with this subchapter.

5-3 SUBCHAPTER D. DUTIES OWED TO WRAP BORROWER

5-4 Sec. 159.151. MONEY HELD IN TRUST. A person who collects or
5-5 receives a payment from a wrap borrower under the terms of a wrap
5-6 mortgage loan holds the money in trust for the benefit of the
5-7 borrower.

5-8 Sec. 159.152. FIDUCIARY DUTY. A person who collects or
5-9 receives a payment from a wrap borrower under the terms of or in
5-10 connection with a wrap mortgage loan owes a fiduciary duty to the
5-11 wrap borrower to use the payment to satisfy the wrap lender's
5-12 obligations under each debt described by Section 159.001(7)(A)(ii)
5-13 and any other obligation affecting the residential real estate for
5-14 which the wrap lender is responsible.

5-15 SUBCHAPTER E. WRAP BORROWER'S RIGHTS

5-16 Sec. 159.201. APPLICABILITY OF SUBCHAPTER. (a) Subject to
5-17 Subsection (b), this subchapter applies only to a wrap mortgage
5-18 loan for a purchase of residential real estate to be used as the
5-19 wrap borrower's residence.

5-20 (b) This subchapter does not apply to a wrap mortgage loan
5-21 for a sale of residential real estate that is the wrap lender's
5-22 homestead.

5-23 Sec. 159.202. WRAP BORROWER'S RIGHT TO DEDUCT. The wrap
5-24 borrower, without taking judicial action, may deduct from any
5-25 amount owed to the wrap lender under the terms of the wrap mortgage
5-26 loan:

5-27 (1) the amount of any payment made by the wrap borrower
5-28 to an obligee of a debt described by Section 159.001(7)(A)(ii) to
5-29 cure a default by the wrap lender caused by the lender's failure to
5-30 make payments for which the lender is responsible under the terms of
5-31 the wrap mortgage loan; or

5-32 (2) any other amount for which the wrap lender is
5-33 liable to the wrap borrower under the terms of the wrap mortgage
5-34 loan.

5-35 SUBCHAPTER F. ENFORCEMENT OF CERTAIN REGISTRATION REQUIREMENTS

5-36 Sec. 159.251. APPLICABILITY OF SUBCHAPTER. This subchapter
5-37 applies only to a wrap lender who is required to register as a
5-38 residential mortgage loan servicer under Chapter 158.

5-39 Sec. 159.252. INSPECTION; INVESTIGATION. (a) The
5-40 commissioner may conduct an inspection of a wrap lender registered
5-41 under Chapter 158 as the commissioner determines necessary to
5-42 determine whether the wrap lender is complying with that chapter
5-43 and applicable rules. The inspection may include an inspection of
5-44 the books, records, documents, operations, and facilities of the
5-45 wrap lender. The commissioner may share evidence of criminal
5-46 activity gathered during an inspection or investigation with any
5-47 state or federal law enforcement agency.

5-48 (b) For reasonable cause, the commissioner at any time may
5-49 investigate a wrap lender registered under Chapter 158 to determine
5-50 whether the lender is complying with that chapter and applicable
5-51 rules.

5-52 (c) The commissioner may conduct an undercover or covert
5-53 investigation only if the commissioner, after due consideration of
5-54 the circumstances, determines that the investigation is necessary
5-55 to prevent immediate harm and to carry out the purposes of Chapter
5-56 158.

5-57 (d) The finance commission by rule shall provide guidelines
5-58 to govern an inspection or investigation under this section,
5-59 including rules to:

5-60 (1) determine the information and records of the wrap
5-61 lender to which the commissioner may demand access during an
5-62 inspection or investigation; and

5-63 (2) establish what constitutes reasonable cause for an
5-64 investigation.

5-65 (e) Information obtained by the commissioner during an
5-66 inspection or investigation under this section is confidential
5-67 unless disclosure of the information is permitted or required by
5-68 other law.

5-69 (f) The commissioner may share information gathered during

6-1 an investigation under this section with a state or federal agency.
6-2 The commissioner may share information gathered during an
6-3 inspection with a state or federal agency only if the commissioner
6-4 determines there is a valid reason for the sharing.

6-5 (g) The commissioner may require reimbursement of expenses
6-6 for each examiner for an on-site examination or inspection of a
6-7 registered wrap lender under this section if records are located
6-8 out of state and are not made available for examination or
6-9 inspection by the examiner in this state. The finance commission by
6-10 rule shall set the maximum amount for the reimbursement of expenses
6-11 authorized under this subsection.

6-12 Sec. 159.253. ISSUANCE AND ENFORCEMENT OF SUBPOENA.

6-13 (a) During an investigation conducted under this subchapter, the
6-14 commissioner may issue a subpoena that is addressed to a peace
6-15 officer of this state or other person authorized by law to serve
6-16 citation or perfect service. The subpoena may require a person to
6-17 give a deposition, produce documents, or both.

6-18 (b) If a person disobeys a subpoena or if a person appearing
6-19 in a deposition in connection with the investigation refuses to
6-20 testify, the commissioner may petition a district court in Travis
6-21 County to issue an order requiring the person to obey the subpoena,
6-22 testify, or produce documents relating to the matter. The court
6-23 shall promptly set an application to enforce a subpoena issued
6-24 under Subsection (a) for hearing and shall cause notice of the
6-25 application and the hearing to be served on the person to whom the
6-26 subpoena is directed.

6-27 SUBCHAPTER G. ENFORCEMENT OF CHAPTER

6-28 Sec. 159.301. CEASE AND DESIST ORDER. (a) The

6-29 commissioner, if the commissioner has reasonable cause to believe
6-30 that a wrap lender or wrap mortgage loan originator to whom this
6-31 chapter applies has violated or is about to violate this chapter,
6-32 may issue without notice and hearing an order to cease and desist
6-33 from continuing a particular action or an order to take affirmative
6-34 action, or both, to enforce compliance with this chapter.

6-35 (b) An order issued under Subsection (a) must contain a
6-36 reasonably detailed statement of the facts on which the order is
6-37 made. If a person against whom the order is made requests a
6-38 hearing, the commissioner shall set and give notice of a hearing
6-39 before the commissioner or a hearings officer. The hearing shall be
6-40 governed by Chapter 2001, Government Code. Based on the findings of
6-41 fact, conclusions of law, and recommendations of the hearings
6-42 officer, the commissioner by order may find a violation has
6-43 occurred or not occurred.

6-44 (c) If a hearing is not requested under Subsection (b) not
6-45 later than the 30th day after the date on which an order is made, the
6-46 order is considered final and not appealable.

6-47 (d) The commissioner, after giving notice and an
6-48 opportunity for hearing, may impose against a person who violates a
6-49 cease and desist order an administrative penalty in an amount not to
6-50 exceed \$1,000 for each day of the violation. In addition to any
6-51 other remedy provided by law, the commissioner may institute in
6-52 district court a suit for injunctive relief and to collect the
6-53 administrative penalty. A bond is not required of the commissioner
6-54 with respect to injunctive relief granted under this subsection.

6-55 SECTION 4. Section 180.003, Finance Code, is amended by
6-56 amending Subsection (a) and adding Subsection (d) to read as
6-57 follows:

6-58 (a) The following persons are exempt from this chapter:

6-59 (1) a registered mortgage loan originator when acting
6-60 for an entity described by Section 180.002(16)(A)(i), (ii), or
6-61 (iii);

6-62 (2) an individual who offers or negotiates terms of a
6-63 residential mortgage loan with or on behalf of an immediate family
6-64 member of the individual;

6-65 (3) a licensed attorney who negotiates the terms of a
6-66 residential mortgage loan on behalf of a client as an ancillary
6-67 matter to the attorney's representation of the client, unless the
6-68 attorney:

6-69 (A) takes a residential mortgage loan

7-1 application; and
7-2 (B) offers or negotiates the terms of a
7-3 residential mortgage loan;
7-4 (4) an individual who offers or negotiates terms of a
7-5 residential mortgage loan secured by a dwelling that serves as the
7-6 individual's residence;
7-7 (5) subject to Subsection (d), an owner of residential
7-8 real estate who in any 12-consecutive-month period makes no more
7-9 than five residential mortgage loans to purchasers of the property
7-10 for all or part of the purchase price of the residential real estate
7-11 against which the mortgage is secured; and
7-12 (6) subject to Subsection (d), an owner of a dwelling
7-13 who in any 12-consecutive-month period makes no more than five
7-14 residential mortgage loans to purchasers of the property for all or
7-15 part of the purchase price of the dwelling against which the
7-16 mortgage or security interest is secured.
7-17 (d) In determining eligibility for an exemption under
7-18 Subsection (a)(5) or (6), two or more owners of residential real
7-19 estate or a dwelling, as applicable, are considered a single owner
7-20 for the purpose of computing the number of mortgage loans made
7-21 within the period specified by those subdivisions if any of the
7-22 owners are affiliates, as defined by Section 1.002(1), Business
7-23 Organizations Code, or if any of the owners have substantially
7-24 common ownership, as determined by the savings and mortgage lending
7-25 commissioner.

7-26 SECTION 5. This Act takes effect September 1, 2017.

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